

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1225, 1227 and 1228 all of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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NITIN RATILAL

Versus

EXECUTIVE ENGINEER  
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Appearance:

MRS DT SHAH for Petitioner  
MR RJ OZA for Respondent No. 1  
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/03/2000

ORAL JUDGEMENT

In all these petitions, learned advocate Ms. D.T.Shah is appearing for the petitioners and learned advocate Mr. R.J.Oza is appearing for the respondents. All these petition raise common questions, they are being

disposed of by this common judgment.

The facts of special civil application no. 1225 of 1990, in short, are that the petitioner Nitin Ratilal was appointed as work charge clerk in the scale of Rs.950.00 by order dated 15th October, 1987 by respondent No. 2 herein for the scarcity and relief work and thereafter, he was transferred in the office of the Superintending Engineer, Kachchh on account of closure of relief work and his service was terminated on 18th July, 1988 and was sent back in the office of the respondent no. 2. However, the Jilla Kamdar Sangh had filed special civil application no. 4618 of 1988 on behalf of several Kamdars including the petitioner herein claiming permanency benefits on completion of five years' service and had further claimed for pay scale of Rs.950.1500 on the basis of equal pay for equal work. In the said petition, during the course of hearing about interim relief, this court directed the respondents to consider the case of the petitioner and other such employees on the basis of the circular dated 17th October, 1988. Thereafter, the petitioner was appointed by order dated 10.8.1989 as skilled labourer and his pay scale was fixed by the first respondent at Rs.750.00 plus DA. It is the case of the petitioner that in other irrigation division namely Jamnagar, one Raghuvir Jadeja, daily rojambar was given the pay scale of Rs.950/- on completion of five years' service whereas the petitioner who was appointed on 1st January, 1981 and who has completed ten years service has been given the pay scale of Rs.750/- by order annexure "C" dated 10th August, 1989. According to the petitioner, he is discharging such similar duties and work which is being discharged by said Raghuvirsinh Jadeja and, therefore, he is also entitled and eligible to the pay scale of Rs.950/- plus other usual allowances on the basis of equal pay for equal work. In view of these facts, the petitioner has prayed that the order annexure "C" dated 10th August, 1989 be set aside and the respondents be directed to pay to the petitioner the salary in the pay scale of Rs. 950-1500 plus usual allowances on the basis of the order dated 12.5.1989 (Annexure "E"). The prayer for setting aside the circular dated 17.10.1988 has not been pressed by the learned advocate for the petitioner.

In this petition, inspite of service of notice, the respondents have not filed any affidavit in reply by challenging the averments made in the petition which are supported by the documents produced by the petitioner alongwith the petition.

Learned advocate appearing for the respondent has submitted that merely because one of the workman has been granted some benefit the petitioner cannot claim such similar treatment and similar benefit because the petitioner was appointed as labourer and was working as labourer and, therefore, the petitioner is not entitled to the pay scale of Rs.950.1500 as prayed for by him. He has further submitted that this petition is required to be dismissed with costs.

In special civil application no. 1227 of 1990, the petitioner was appointed as work charge clerk on the pay scale of Rs.950/- by order dated 15th October, 1987 by the second respondent for the purpose of relief work and thereafter, his service was terminated on 18.7.1988 and he was sent back in the office of the respondent. Rest of the facts are identical to the facts of special civil application no. 1225 of 1990 and, therefore, they are not repeated herein. Here also, the petitioner is claiming the benefit of the pay scale of Rs.950-1500 on the basis of the grant of same benefit given to said Raghuvirsinh Jadeja.

In special civil application No. 1228 of 1990, in case of Umesh K. Acharya, petitioner in the said petition, the petitioner was appointed in the scale of Rs. 950/- on 15.10.1987 and his services were terminated on account of closure on 8th July, 1988 and was sent back in the respondents' office. Thereafter, in pursuance to the directions issued by this court in special civil application no. 4616 of 1988, the petitioner was appointed as a skilled labourer vide order dated 10th August, 1989 and his pay was fixed in the pay scale of Rs.750/- plus DA. In special civil application no. 1228 of 1990 also, the petitioner has prayed for such similar relief as has been prayed for in special civil application no. 1227 of 1990.

It is pertinent to note that in all these petitions, the respondents have chosen not to file the affidavit in reply and have not challenged the averments made in these petitions which are supported by the documents produced by the petitioners alongwith the present petitions. Therefore, in light of the facts on record and also in light of the submissions made during the course of hearing, these petitions are required to be decided.

In all these petitions, the petitioners have been given the benefits of the Government Resolution dated 17.10.1988 vide order at annexure "C" dated 10th August,

1989 and have been placed in the pay scale of Rs.750.00 plus Dearness Allowance. In the wage slip produced on record, the designation of the petitioners herein is that of 'skilled labourer' and these facts have not been disputed by the respondents. Similarly, one Raghuvirsinh Jadeja, daily wager skilled labourer has been granted the pay scale of Rs.950-1500 which is not disputed by the respondents. In view of these facts, naturally, if the petitioners are designated as skilled labourer and if said Raghuvirsinh is also designated as skilled labourer as per order annexure "E", then, naturally, the petitioners are entitled to the same treatment and benefit which has been given to said Raghuvirsinh Jadeja, otherwise, it would amount to discrimination amongst equal in equal circumstances and would become violative of Article 14 of the Constitution of India. It has been submitted on behalf of the petitioners that the petitioners are performing and discharging duties which are similar in nature and identical to those which are being performed by said Raghuvirsinh Jadeja and, therefore, the petitioners are entitled to equal pay for equal work. The averments made to this effect have not been controverted by the respondents by filing the affidavit in reply. In view of these facts which have gone uncontroverted and unchallenged, I am of the opinion that these petitions are required to be allowed.

In view of these facts, the order dated 10th August, 1989 is required to be quashed and set aside in so far as the petitioners herein are concerned and the respondents are required to grant the pay scale to the petitioners in the pay scale of Rs. 950-1500 on the basis of the order dated 12th May, 1989 (ANNEXURE "E") with effect from 12th May, 1989 and the respondents are required to pay difference of pay and allowances to the petitioners accordingly. Accordingly all these petitions are allowed. The order dated 10th August, 1989 is hereby quashed and set aside in so far as the petitioners herein are concerned. The respondents are hereby directed to give pay scale of Rs. 950-1500 to the petitioners with effect from 12th May, 1989 and to pay difference of salary and other allowances on the basis of the order dated 12th May, 1989 (annexure "E"). The respondents shall fix the pay of the petitioners in the pay scale of Rs.950-1500 with effect from 12th May, 1989 on the basis of the order at annexure "C" within three months from the date of receipt of copy of this order and shall also pay the difference of pay and allowances pursuant to fixation of the petitioners' pay as aforesaid within four months from the date of receipt of copy of this order. Rule is made absolute accordingly. There

shall be no order as to costs.

23.3.2000. (H.K.Rathod,J.)